

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FILED/ACCEPTED
NOV 8 . 2012
Federal Communications Commission
Office of the Secretary

In re)
)
MARITIME COMMUNICATIONS/LAND) EB Docket No. 11-71
MOBILE, LLC) File No. EB-09-IH-1751
) FRN: 0013587779
)
Participant in Auction No. 61 and Licensee of)
Various Authorizations in the Wireless Radio)
Services)
)
Applicant for Modification of Various) Application File Nos. 0004030479,
Authorizations in the Wireless Radio Services) 0004144435, 0004193028, 0004193328,
) 0004354053, 0004309872, 0004310060,
Applicant with **ENCANA OIL AND GAS (USA),**) 0004314903, 0004315013, 0004430505,
INC.; DUQUESNE LIGHT COMPANY; DCP) 0004417199, 0004419431, 0004422320,
MIDSTREAM, LP; JACKSON COUNTY) 0004422329, 0004507921, 0004153701,
RURAL MEMBERSHIP ELECTRIC) 0004526264, 0004636537,
COOPERATIVE; PUGET SOUND ENERGY,) and 0004604962
INC.; ENBRIDGE ENERGY COMPANY,)
INC.; INTERSTATE POWER AND LIGHT)
COMPANY; WISCONSIN POWER AND)
LIGHT COMPANY; DIXIE ELECTRIC)
MEMBERSHIP CORPORATION, INC.;)
ATLAS PIPELINE – MID CONTINENT, LLC;)
DENTON COUNTY ELECTRIC)
COOPERATIVE, INC., DBA COSERV)
ELECTRIC; AND SOUTHERN CALIFORNIA)
REGIONAL RAIL AUTHORITY)

To: Marlene H. Dortch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

ENFORCEMENT BUREAU'S AND MARITIME'S
JOINT STATUS REPORT IN RESPONSE TO ORDERS FCC 12M-48 AND 12M-49

1. The Presiding Judge issued Order FCC 12M-48 in response to Skytel's¹

Opposition to the Motion for Partial Summary Decision filed by Maritime

¹ SkyTel refers to Environmental, LLC, Intelligent Transportation and Monitoring Wireless, LLC and Verde Systems, LLC.

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Communications/Land Mobile, LLC (Maritime) on August 31, 2012.² As the Presiding Judge noted in this Order, in its Opposition, SkyTel suggested that the issues raised by Maritime's Motion were not ripe for summary decision without further discovery of 93 boxes of documents.³ Accordingly, the Presiding Judge requested that "each party with knowledge provide a status report with respect to the above-mentioned documents, and specifically report: (1) which litigants requested access to these documents; (2) the date when such requests were made; (3) whether litigants are in receipt of the requested documents; (4) the dates when such documents were obtained; (5) the subject matter of the documents; (6) whether any of the documents are known or believed to relate to the issue of Watercom's station construction (state which and give reasons); (7) whether there are documents yet to be reviewed; and (8) any additional information regarding the documents that litigants believe will be useful in determining whether the documents raise a material issue of fact."⁴

2. On October 31, 2012, the Presiding Judge released Order FCC 12M-49 in which he not only extended the filing deadline for the Status Report from November 1, 2012 until November 8, 2012, but also clarified that the parties should "state whether, based on first-hand knowledge, some of the 'box documents' probably raise material issues of fact."⁵ As the Presiding Judge noted, "[m]ere speculation will not suffice."⁶ The Presiding Judge further ordered that the Status Report "be filed jointly by two or more parties, if feasible and practical."⁷

² See Maritime's Motion for Partial Summary Decision (Motion), filed August 31, 2012.

³ See Order FCC 12M-48 (ALJ, rel. Oct. 24, 2012) at 1.

⁴ Id. at 3.

⁵ See Order FCC 12M-49 (ALJ, rel. Oct. 31, 2012) at 1.

⁶ Id.

⁷ Id. at 2.

3. Pursuant to the Presiding Judge's directions in Orders FCC 12M-48 and 12M-49, the Enforcement Bureau (Bureau) and Maritime jointly file this Status Report in response to these Orders. Maritime, by its respective counsel, represents that it has read this Joint Status Report in Response To Orders FCC 12M-48 and 12M-49 and has authorized the undersigned counsel for the Bureau to file this document on Maritime's behalf.

Question 1: Which Litigants Requested Access To These Documents

4. **The Bureau:** The Bureau requested access to the 93 boxes of documents in its First Set of Requests for the Production of Documents to SkyTel at Request Number 1, filed on June 7, 2012. Specifically, this Request reads as follows: All Documents that have been stored at Nation's Capital Archive Storage Systems, Inc., located at 14811 Farm Creek Drive, Woodbridge, Virginia, 22191, and that Skytel received or is to receive pursuant to a subpoena issued in *Skybridge Spectrum Foundation, et al. v. Mobex Network Services, et al.* (Civil Action No. 2:11-CV-000993).⁸ The Bureau requested these documents from Skytel after the May 22, 2012 prehearing conference during which Mr. Havens agreed to provide these documents to the Bureau and the Presiding Judge instructed the Bureau to send Mr. Havens a request for these documents in writing.⁹

5. **Maritime:** Maritime has sought access to the documents in connection with both the Mississippi bankruptcy case and the New Jersey antitrust litigation.

⁸ See Enforcement Bureau's First Set of Requests for the Production of Documents to SkyTel at Request Number 1, filed on June 7, 2012.

⁹ See, e.g., Transcript of May 22, 2012 Prehearing Conference at pp. 651, 654-55.

Question 2: The Date When Such Requests Were Made

6. **The Bureau:** The Bureau requested these 93 boxes of documents on June 7, 2012.

7. **Maritime:** Maritime's counsel is awaiting information from counsel in the other proceedings as to the date of any formal request for access, but it is believed that there have been various informal discussions (and possibly pleadings) in both proceedings at various times regarding the documents.

Question 3: Whether Litigants Are In Receipt Of The Requested Documents

8. **The Bureau:** The Bureau has not received the requested 93 boxes of documents.

9. **Maritime:** Maritime's counsel in the New Jersey proceeding recently obtained access to the documents in the form of a hard drive and/or scanned electronic copies. See further information in paragraph 11, below.

Question 4: The Dates When Such Documents Were Obtained

10. **The Bureau:** The Bureau has not obtained the requested 93 boxes of documents.

11. **Maritime:** Maritime's counsel in the New Jersey antitrust case obtained access to the disk on or about October 1, 2012, pursuant to a September 26, 2012, order of the U.S. Magistrate Judge in that proceeding (Civil Action No. 11-93, Doc 114). That order further provides that "counsel ... may not share any information [from the disk] with their clients absent agreement of all counsel in this case or order of the court." *Id.*

Question 5: The Subject Matter Of The Documents

12. **The Bureau:** The Bureau has no personal knowledge as to the subject matter of the requested 93 boxes of documents.

13. **Maritime:** It is Maritime's belief that any extant documents regarding construction of the Watercom stations are among the files maintained in Clarksville, Indiana, and were included in the "12 Boxes" production dated February 17, 2012. Although he has not had access to the NCASS documents themselves, Mr. Reardon has reviewed a directory listing of the documents on the disk. Based on this limited information, it appears that two of the boxes apparently contain documents related to Watercom matters. Without access to the actual documents, it is not possible to know to what extent, if any, they relate to construction of the Watercom facilities, as opposed to financial and other matters.

Question 6: Whether Any Of The Documents Are Known Or Believed To Relate To The Issue Of Watercom's Station Construction (State Which And Give Reasons)

14. **The Bureau:** The Bureau has no personal knowledge as to whether the documents are known or are believed to relate to the issue of Watercom's station construction.

15. **Maritime:** Regardless of what is or is not in the NCASS documents, they are not relevant to the pending motion for partial summary decision. That motion addresses only two categories of licenses: (a) those that are subsumed within Maritime's geographic authority, and (b) the Watercom stations, as defined in the motion (i.e., all of the call signs beginning with "WHG," except WHG693). The former have been or are being cancelled, Maritime has stipulated that they are deemed terminated, and Issue (g) is therefore moot as to those licenses. As to the Watercom stations, the pending motion addresses only the "construction" portion of Issue G, a matter that was already definitively ruled on by the Commission in 1987, as discussed in the motion. The NCASS documents therefore are not relevant to and provide no basis for delaying action on the pending motion for summary decision.

Question 7: Whether There Are Documents Yet To Be Reviewed

16. **The Bureau:** The Bureau understands that there are a total of 93 boxes of documents at the storage facility. The Bureau has no personal knowledge as to whether these boxes contain documents that pertain to the Watercom licenses – the only licenses at issue in Maritime’s Motion to which Maritime and the Bureau had not previously stipulated. Accordingly, the Bureau has no personal knowledge as to whether there are documents yet to be reviewed, and if so, the approximate number of such documents and the estimated time needed to review. However, as discussed in further detail in response to Question 8, the Bureau does not believe that any documents in the 93 boxes that relate to the Watercom Licenses are likely to raise material issues of relevant fact concerning the construction of the Watercom Licenses.

17. **Maritime:** Maritime lacks the funds to hire a third-party expert to assist counsel in reviewing the NCASS documents, or to reproduce copies of them. Maritime will, however, attempt to arrange for John Reardon to gain access to the documents and will advise the Bureau and the ALJ if this occurs. In the meantime, Maritime has no objection to the Bureau being granted access to the NCASS documents, and will instruct its New Jersey counsel to cooperate with the Bureau to arrange for that.

Question 8: Any Additional Information Regarding The Documents That Litigants Believe Will Be Useful In Determining Whether The Documents Raise A Material Issue Of Fact

18. **The Bureau:** The Bureau maintains the position it took in its Response to Maritime’s Motion for Summary Decision (Response), filed on September 17, 2012.¹⁰ Therein, the Bureau acknowledged that the Commission’s *Waterway Communications System, Inc., Memorandum Opinion and Order* (FCC 87-373), 2 FCC Rcd 7317 (1987) (Watercom Order), resolves the “construction” question of Issue (g) with respect to the Watercom Licenses.

¹⁰ See Response at 4-5.

Specifically, part of Issue (g) of the HDO requires that the Presiding Judge determine whether Maritime's site-based facilities were constructed within two years of their grant, as required by Section 80.49(a)(3) of the Commission's rules.¹¹ The Watercom Order stated that "Watercom was required to meet a schedule of construction ... and put the system into operation within the time we had allowed."¹² The Commission further noted that "there can be no question of spectrum hoarding or other dereliction in [Watercom's] inauguration of service."¹³ Accordingly, the Bureau agreed with Maritime that there is no genuine issue of material fact for determination at the hearing as to whether the Watercom Licenses were timely constructed in accordance with Section 80.49(a) of the Commission's rules and that summary judgment should be granted on this question.

19. In addition, the Bureau has reviewed many of the documents concerning the Watercom Licenses that Maritime produced earlier this year. Accordingly, the Bureau does not believe that any documents in the 93 boxes that relate to the Watercom Licenses are likely to raise material issues of relevant fact concerning the construction of the Watercom Licenses that should delay resolution of Maritime's Motion on this question.

20. The Bureau notes, as it did in its Response, that the Watercom Order does not address the second part of Issue (g) – *i.e.*, whether operations of the Watercom Licenses have been discontinued and, if so, whether such discontinuance is permanent pursuant to Section 1.955(a) of the Commission's rules. Thus, even if the Presiding Judge were to grant summary judgment on the "construction" question of Issue (g) with respect to the Watercom Licenses, the

¹¹ See *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, EB Docket No. 11-71, 26 FCC Rcd 6520 (2011) (HDO) at ¶ 62(g).

¹² Watercom Order at ¶ 16.


¹³ *Id.*

“operations” question of Issue (g) would still need to be determined at hearing with respect to these authorizations. However, the Bureau does not foresee that documents contained in the 93 boxes, which the Bureau understands pre-date Maritime’s acquisition of these stations, are likely to raise material issues of relevant fact concerning the operation of the Watercom Licenses.

21. **Maritime:** Maritime has no further information to offer that, in its view, is appropriate for inclusion in this joint status report. Maritime reserves the right, however, to separately respond to any statements, allegations, assertions, accusations, etc., provided directly by the Havens parties.

Respectfully submitted,

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November 8, 2012

CERTIFICATE OF SERVICE

Tamika Parker, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 8th day of November, 2012, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S AND MARITIME'S JOINT STATUS REPORT IN RESPONSE TO ORDERS FCC 12M-48 AND 12M-49" to:

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